

# Current Developments in the Law Relating to International Watercourses: Implications for Portugal\*

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## 1. INTRODUCTION

Following close to the three decades of study on the topic, the General Assembly of the United Nations on 21 May 1997 adopted the Convention on the Law of the Non-Navigation Uses of International Watercourses<sup>1</sup>. Containing 37 articles with a 14 article Annex, the instrument was adopted by a vote of 104 States in favour, 3 against (Turkey, China and Burundi) and 26 abstentions. The importance of this document for States sharing international watercourses cannot be underestimated. Despite the remaining controversy regarding interpretation of certain conventional provisions, the UN Watercourses Convention has achieved a very important objective: it has clarified the normative content of the rules of customary international law that govern the non-navigational uses of international watercourses.

This paper will examine current developments in the law of international watercourses, focusing on the new UN Watercourses Convention. Several case studies have been selected with a view to elaborating some of the important issues that arise in this field. Reference will also be made to the recent Danube case decision by the International Court of Justice. The paper will examine finally two regional instruments that may be particularly relevant to Portugal: the 1992 Helsinki Convention and the proposed European Water Framework Directive.

## 2. THE SCARCITY OF WATER AND THE POTENTIAL FOR DISPUTES

The scarcity of fresh water poses a threat to many regions of the world<sup>2</sup>. Although 97% of the world's surface is covered by water, 94% of this water is contained in the world's oceans, and therefore of little use for drinking, agricultural or industrial utilisation. Of the remaining 3% of fresh water, over 2% is locked away in the polar ice caps, glaciers or underground aquifers, and is therefore inaccessible. It is estimated that only 0,36% of the world's water contained in rivers, lakes and

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1 UN Doc. A/51/L. 72.

2 S. McCaffrey, "Water Scarcity: Institutional and Legal Response" in E.H.P. Brans et al (ed.). *The Scarcity of Water. Emerging Legal and Policy Responses* 43 (1997).

swamps is sufficiently accessible to be considered as a renewable fresh water resource<sup>3</sup>.

The distribution of water around the world is also very uneven. The World Bank has identified 20 countries with chronic water shortages<sup>4</sup>. It is interesting to note that China, with over 25% of the world's population, can claim only 8% of its fresh water resources<sup>5</sup>. Alternatively, many developed countries would have an abundance of freshwater supplies compared to their population. Hence the world is not faced with a global water shortage *per se*, but instead a series of chronic regional and local water shortages. This sets the stages for possible "water wars".

"Ready to fight to the last drop"<sup>6</sup>. This recent news headline is echoed in the following statement issued at the UN Conference on Managing Water Resources for Large Cities and Towns convened in Beijing in March 1996: "Increasing concern [is] being voiced that the next century may be scarred by wars over water, even as this century has been devastated by wars over oil"<sup>7</sup>. Are "water wars" an imminent threat?

A report by the United Nations claims that some 3,000 of the world's interregional and transnational river basins are the scenes of current conflicts<sup>8</sup>. Often water scarcity is complicated by other factors such as political, ethnic or religious tensions. The number of existing and potential water disputes is not decreasing. They occur in different regions of the world and involve different States. However, the predominant pattern seems to be repeated from case to case: controversy between upstream and downstream States over increased or new uses of fully exploited shared water resources. The following examples will serve to illustrate this pattern.

## 2.1. The Nile

The Nile river basin is shared by ten countries<sup>9</sup>. Egypt, the lowest downstream and most economically developed State, depends on the

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3 K.H. Butts, *The Strategic Importance of Water*, 27 Parameters 65 (1997), at 67.

4 *Id.* at 68.

5 *Id.*

6 J. Vidal, "Ready to Fight to the Last Drop", *Guardian Weekly*, 20 August 1995.

7 Statement by Wall N'Dow, Secretary-General of Habitat II, UN Centre for Human Settlements, cited in C. Aldinger, "World Facing Water Crisis in 21st Century", *Reuters*, 19 March 1996 (on file with authors).

8 T. Swartzberg, *The World's Freshwater Supplies: The Crunch is Here*, *LHT*, 30 Sept. 1997, at 13.

9 The Nile is comprised of two main systems, the Blue Nile (Eritrea, Ethiopia, Sudan, Egypt) and the White Nile (Burundi, Congo, Egypt, Kenya, Rwanda, Sudan, Tanzania, Uganda).

river for 97% of its water supplies, yet contributes virtually no water to the Nile<sup>10</sup>. In the 1950's, disputes between Egypt and Sudan over water allocation led to the bilateral 1959 Nile Waters Agreements, which allocated water quantities to each State<sup>11</sup>. Notably, this treaty is binding only on the two States party to it: Egypt and Sudan.

Whereas the upstream basin States of the Nile have concluded a number of cooperative arrangements, the current controversy over the Nile relates primarily to the Blue Nile system. Ethiopia, the uppermost basin State on the Nile is attaining the political stability and capacity necessary to start developing the Nile headwaters within its territory. Its plans of providing food security and enhancing socio-economic development in the region are based upon the use of water for irrigation and hydro-electric power production.

Since any new uses of the Blue Nile may adversely affect downstream basin States, Ethiopia has been prevented from proceeding with its plans, primarily as a result of objections by Egypt. The World Bank and other lenders are reluctant to invest money in water development projects where the basin States have not agreed upon utilisation of their shared waters<sup>12</sup>. The lack of funding however may soon no longer be the preventative factor for Ethiopia to press ahead with its development schemes, and Egypt may find itself facing such a prospect in the very near future. The strength of Egypt's resistance to upstream development is quite significant, and there are indications that it will not hesitate to use force to preserve its "acquired rights" over the waters of the Nile<sup>13</sup>. Ethiopia and Egypt have exchanged diplomatic notes on the matter, and negotiations are currently continuing.

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<sup>10</sup> *Id.*, at 77.

<sup>11</sup> Agreement between the Republic of the Sudan and the United Arab Republic for the Full Utilisation of the Nile Waters, 8 Nov. 1959.

<sup>12</sup> The World Bank is precluded from lending where the development may "appreciably harm" other riparian States (under its Operational Directive 7.50). Since building dams in Ethiopia would adversely affect Egypt's existing uses, the Bank would not proceed until Ethiopia and Egypt reached agreement on their respective rights of allocation of the Nile waters. One may question whether the World Bank's policy operates as a veto on development.

<sup>13</sup> M. Falkenmark & G. Lindh, *Water and Economic Development*, in P. Gleick (ed.), *Water in Crisis* (1993), at 86.

## 2.2. The Mekong

Despite the recent agreement between the Lower Mekong basin States, Cambodia, Laos, Thailand and Vietnam<sup>14</sup>, there remains the potential for disputes over the shared waters. The agreement is based upon the principle of reasonable and equitable utilisation<sup>15</sup>. An international body, the Mekong River Commission, was established to implement the terms of the agreement. However, the main shortcoming of this "model" agreement is the absence of the two upstream States: Myanmar (Burma) and China. With secured sources of independent funding, China has commenced construction of a series of dams on the upper stretches of the Mekong. This will adversely affect the supply to downstream States. In this situation the potential for future disputes over the Mekong is evident.

## 2.3. The ICJ Danube Decision

The Danube, the second longest river in Europe, rises in Germany and, over the course of some 2,850 kilometers, passes through a number of Central and Eastern European States before emptying into the Black Sea. Its basin stretches over the territories of Germany, Austria, the Czech and Slovak Republics, Hungary, Serbia, Croatia, Bosnia Herzegovina, Slovenia, Bulgaria, Romania, and Ukraine. A number of treaties have refined the legal regime applicable to the Danube. The most recent is the Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Danube River Protection Convention) signed by nine of the Danube Basin States in Sofia on 29 October 1994<sup>16</sup>.

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14 Agreement on the Co-operation for the Sustainable Development of the Mekong River Basin, 5 April 1995, reprinted in 34 ILM 864 (1995).

15 See O. Wouters, *An Assessment of Recent Developments in International Watercourse Law through the Prism of the Substantive Rules Governing Use Allocation*, 36 NRJ 417 (1996).

16 Convention on Cooperation for the Protection and Sustainable Use of the Danube River, Bundesrat, Drucksache 268/95, 12.05.95 (Danube River Protection Convention). The signatories included: Austria, Bulgaria, Croatia, Germany, Hungary, Moldova, Romania, Slovak Republic, Ukraine, and the European Community. The Governments of the Czech Republic and Slovenia informed the Conference of their willingness to sign the Convention as soon as possible; paragraph 9 of the Final Act, *ibid.*, at 34.

Despite this history of cooperation, Hungary and Slovakia had a dispute over the Danube, recently decided by the ICJ<sup>17</sup>. The controversy arose over the joint construction of the Gabčíkovo-Nagymaros barrage system, agreed to by Czechoslovakia and Hungary under the 1977 Budapest Convention<sup>18</sup>. In May 1989, Hungary, pressured by a strong environmental lobby, unilaterally suspended construction at Nagymaros and proposed that joint studies be undertaken regarding the ecological risks arising from the project. All attempts to resolve the matter on a diplomatic level, including involvement of the European Commission, failed.

Towards the end of the 1992, Slovakia unilaterally adopted a "provisional solution", by which it diverted most of the water of the Danube into a canal constructed to feed the Gabčíkovo hydroelectric project which, when completed, could satisfy up to 12% of Slovakia's energy requirements. This unilateral action resulted in immediate and significant water loss to Hungary, where the Danube was used for domestic and agricultural purpose. In March 1992, the Hungarian Parliament voted to terminate the 1977 treaty. On 23 October 1992, Hungary instituted proceedings against Czechoslovakia before the ICJ. Following the dissolution of Czechoslovakia, negotiations between Hungary and Slovakia led to the conclusion of a Special Agreement which brought the dispute before the ICJ.

The ICJ decided that Hungary and Slovakia were obliged to implement the 1977 Budapest Convention. The Court reject Hungary's assertions that peremptory norms of international environmental law permitted it to terminate the treaty. Further, the ICJ made reference to the principle of equitable and reasonable utilisation and stated:

Modern development of international law has strengthened the principle expressed in the River Oder case that "the community of interest" in a navigable river becomes the basis of a common legal interest for non-navigational uses of international watercourses<sup>19</sup>.

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17 "Hungary-Slovak Republic: Special Agreement for the Submission to the International Court of Justice of the Difference Between Them Concerning the Gabčíkovo-Nagymaros Project", Brussels, 7 April 1993, entered into force 28 June 1993, 32 ILM 1293 (1993).

18 Details of the history can be found in the presentation by Professor L. Valki to the ICJ "Outline of the History and the Current Status of the Project", reproduced at <<http://www.meh.hu.80/kum/Haga/Day1/2.htm>> pp. 1-5. See also overview in McCaffrey, S.C., "Fresh Water" Report, 3 YBIEL 1992, 233-240, 234.

19 Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), ICJ Decision, 25 September 1997, para 85, found at <<http://www.icj-cij.org/idoCKET/ihs/ihs/ihsjudgement/ihsjudcontent.htm>> [hereafter, Danube case].

The Court's ruling contains a very important reference to Hungary's right to "an equitable and reasonable share of the natural resources of the Danube"<sup>20</sup> and cites Article 5 (Equitable and Reasonable Utilisation) of the 1997 UN Watercourses Convention<sup>21</sup>. This validation of the principle of equitable and reasonable utilisation is notable especially given the fact that Hungary based so much of its case on the principle of no environmental harm. At present, Hungary and Slovakia continue to attempt to reach agreement on implementation of the 1977 Budapest Convention in accordance with the Court's decision.

### 3. RESOLVING INTERNATIONAL WATER DISPUTES: LEGAL RESPONSES

#### 3.1. The 1997 UN Watercourses Convention

The adoption of the UN Watercourses Convention was preceded by extensive negotiations in the UN's Sixth Committee (convened as a Working Group of the Whole) which revealed the extent of controversy that existed on key issues<sup>22</sup>. At the end of its first session in November 1996, it was questionable whether States could agree on a text and some even believed the agreement would never be reached. At the second two-week session (March/April 1997), following much debate, many proposals and inevitable compromise, the Working Group of the Whole took the unusual step of voting on a revised draft text. By a vote of 42 States for, 3 against and 18 abstentions, a final text was adopted by the Working Group of the Whole<sup>23</sup>. Following is a summary of the voting record on that document<sup>24</sup>.

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<sup>20</sup> *Danube case*, para. 86.

<sup>21</sup> *Id.*

<sup>22</sup> See discussion in P. Wouters, *Rivers of the World*, PH. D. Dissertation, IHEI, Geneva (1998).

<sup>23</sup> UN Doc. A/51/869.

<sup>24</sup> Source of Table, Wouters, *Rivers of the World*, supra note 28. See also UN Doc. A/C.6/51/NUW/L.3 Add. 1/CRP.94; Sixth Committee Meeting #62, 4 April 1997.

TABLE 1 – Voting Record / Working Group of the Whole / Text as a Whole		
FOR (42)	AGAINST (3)	ABSTAINED (18)
Algeria, Austria, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, Czech Republic, Denmark, Ethiopia, Finland, Germany, Greece, Holy See, Hungary, Iran, Italy, Jordan, Liechtenstein, Macedonia, Malawi, Malaysia, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Portugal, Romania, South Africa, Sudan, Switzerland, Syria, Thailand, Tunisia, UK, USA, Venezuela, Vietnam, Zimbabwe	China, France, Turkey	Argentina, Bolivia, Bulgaria, Colombia, Ecuador, Egypt, India, Israel, Japan, Lebanon, Lesotho, Mali, Pakistan, Russia, Rwanda, Slovakia, Spain, Tanzania  (* 130 States did not vote)

The issues central to the controversy in the Working Group arose in three key areas: (i) to what extent did States have to comply with the provisions of the Convention in existing and future watercourses agreements; (ii) what was to be the substantive content and relationship between the principles of equitable utilisation and no significant harm (Articles 5 and 7); (iii) to what extent were States to be bound by dispute settlement mechanisms provided for in the draft Convention<sup>25</sup>? The compromise reached in each of these areas reveals a central ground acceptable to the majority of States concerned.

On the first issue, the final text allows States a substantial degree of flexibility with respect to existing and future watercourse agreements. States are free to “adjust the provision” of the Convention to the particular characteristics of the watercourses involved, so long as the rights of other watercourse States are not affected by the Convention. The revised text of Article 3<sup>26</sup> was endorsed by 36 States, rejected by 3 States, with 21 States abstaining from

<sup>25</sup> See Wouters, *Rivers of the World*, supra note 29.

<sup>26</sup> Article 3(1) 1997 UN Watercourses Convention provides: “In the absence of an agreement to the contrary, nothing in the present Convention shall affect the rights and obligations of a watercourses State arising from agreements in force for it on the date on which it became a party to the present Convention”. Article 3(2): Notwithstanding the provision of paragraph 1, parties to agreements referred to in paragraph 1 may, where necessary, consider harmonising such agreements with the basic principles of the present Convention” [emphasis added]. Article 3(3): “Watercourses States may enter into one or more agreements, hereinafter referred to as ‘watercourse agreements’, which apply and adjust the provisions of the present Convention to the characteristics and uses of a particular international watercourses or part thereof” [emphasis added].



voting in the Working Group of the Whole. With respect the dispute settlement, once again States are afforded ample latitude, although the revised text is stronger than its predecessor and calls for compulsory fact-finding which, upon scrutiny, reveals a procedure closer to a compulsory conciliation. On the most important issue – the substantive content and inter-relationship between Articles 5 and 7 – the Working Group made considerable revisions to the formulation of the no-significant-harm rule contained in the ILC's Draft Article 7. The result makes the principle of equitable and reasonable utilisation the governing rule of the Convention<sup>27</sup>. The no-significant-harm principle, substantially changed from its former versions contained in the 1991 and 1994 ILC Draft Articles, can be interpreted as subsidiary to the principle of equitable and reasonable utilisation contained in Article 5<sup>28</sup>. However, the final texts of Articles 5, 6 and 7 were not acceded by all States<sup>29</sup>. The practical application of the substantive rules of the Convention is achieved in accordance with Article 6 which lists the factors to be taken into account when deciding what an equitable and reasonable use of an international watercourses actually is. These include, *inter alia*: geographic, hydrographic, climatic, ecological and other natural factors; the social and economic needs of the watercourses States concerned; the population dependant on the watercourses; the effects of the use of the watercourse by one State on other watercourse States; existing and potential uses of the watercourse; conservation, protection, development and economy of use of the resources of the watercourse, and the availability of alternatives to a planned or existing use<sup>30</sup>.

27 Article 5 of the 1997 UN Watercourses Convention reads: "Watercourses States shall in their respective territories utilise an international watercourse in an equitable and reasonable manner" [emphasis added].

28 Art. 7(1) of the 1997 UN Watercourses Convention reads: "Watercourse States shall, in utilising an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States" [emphasis added]. Article 7(2): "Where significant harm nevertheless is caused to another watercourse State, the States whose use causes the harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of articles 5 and 6, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation" [emphasis added]. These provisions replace the 1994 ILC Draft Article 7 which reads: "States shall exercise due diligence to utilize and international watercourse in such as way as not to cause significant harm to other watercourse States".

29 See discussion in Wouters, *Rivers of the World*, supra note 29. See also, UN Doc. A/C.6/51/NUW/ /CRP.94; Sixth Committee Meeting #62, 4 April 1997.

30 See Article 6(1) (a)-(g), 1997 UN Watercourses Convention.

The final text adopted by the Working Group of the Whole was appended to a resolution put forward before the UN General Assembly by thirty-three States on 21 May 1997<sup>31</sup>. The Convention on Watercourses was adopted on the same date and will remain open for signature until 20 May 2000. Following is a record of the voting in the UN General Assembly on the adopted Resolution<sup>32</sup>.

TABLE 2 – Voting Record / UN general Assembly / 1997 Convention		
FOR (104)	AGAINST (3)	ABSTAINED (27)
Albania, Algeria, Angola, Antigua & Barbuda, Armenia, Australia, Bahrain, Bangladesh, Belarus, Belgium, Botswana, Brazil, Brunei, Darussalam, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Estonia, Federated States of Micronesia, Finland, Gabon, Georgia, Germany, Greece, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iran, Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Laos, Latvia, Liechtenstein, Lithuania, Luxemburgo, Madagascar, Malawi, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Norway, Oman, Papua New Guinea, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Samoa, San Marino, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Sudan, Suriname, Sweden, Syria, Thailand, Trinidad & Tobago, Tunisia, Ukraine, United Arab Emirates, UK, USA, Uruguay, Venezuela, Viet Nam, Yemen, Zambia	Burundi, China, Turkey	Andorra, Argentina, Azerbaijan, Bolivia, Bulgaria, Colombia, Cuba, Ecuador, Egypt, Ethiopia, France, Ghana, Guatemala, India, Israel, Mali, Mongolia, Pakistan, Panama, Paraguay, Peru, Rwanda, Spain, Tanzania, Uzbekistan  (* 33 States were absent) <sup>33</sup>

31 Antigua, Barbuda, Bangladesh, Bhutan, Brazil, Cambodia, Canada, Chile, Denmark, Finland, Germany, Greece, Hungary, Italy, Japan, Laos, Liechtenstein, Malaysia, Mexico, Nepal, Netherlands, Norway, Portugal, Korea, Romania, Sudan, Sweden, Syria, Tunisia, United Kingdom, United States, Uruguay, Venezuela.

32 Source of Table, *Wouters, Rivers of the World*, supra note 29.

33 The absent States: Afghanistan, Bahamas, Barbados, Belize, Benin, Bhutan, Cape Verde, Comoros, Democratic People's Republic of Korea, Dominican Republic, El Salvador, Eritrea, Fiji, Guinea, Lebanon, Mauritania, Myanmar, Niger, Nigeria, Palau, Saint Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Solomon Islands, Sri Lanka, Swaziland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Zaire, Zimbabwe.

It is generally acknowledged that the 1997 UN Watercourses Convention codifies important substantive and procedural rules to govern the interstate relations concerning international watercourses. The overall aim of the instrument is to provide realistic means to prevent and/or resolve dispute over shared water resources. Despite controversy on some key issues, States have supported the adoption of this body of rules at two critical stages of the drafting of the final text: first, by the majority of States voting in the Working Group of the Whole, and secondly, by the majority of States voting at the UN General Assembly. However, it remains to be seen whether and to what extent, the 1997 Convention will become an effective operational instrument providing a legal framework to resolve international water disputes.

### 3.2. The 1992 Helsinki Convention

Another recent instrument, relevant to Portugal in its management of shared water resources, is the regional Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes 1992 (hereafter referred to as the Helsinki Convention<sup>34</sup>). This agreement was concluded under the auspices of the UN Economic Commission for Europe (UN/ECE), a pan-European forum for co-operation, primarily in the field of the environment, transport, trade, statistics and energy. The Helsinki Convention, already ratified by 20 European countries, including Portugal, and the European Union<sup>35</sup>, deals with the prevention, control and reduction of transboundary impacts relating to international watercourses and lakes, with a particular emphasis on environmental protection and conservation. Its objectives include the protection and ecologically sound and rational management, reasonable and equitable use of transboundary waters, and the conservation and restoration of ecosystems.

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34 UN ECE, Convention on the Protection and Use of Transboundary Watercourses and Lakes, 17 March 1992, reprinted in 31 ILM 1312 (1992).

35 Albania, Austria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Norway, Portugal, Republic of Moldova, Romania, Russian Federation, Sweden, Switzerland and the European Union have ratified the Convention (figures to end of 1997).

In July 1997, the first meeting of the parties to the Helsinki Convention was held, and the Helsinki Declaration was adopted<sup>36</sup>. The Declaration provides for close co-operation at all levels – regional, sub-regional, national, provincial and local – and encourages all ECE countries to ratify the Helsinki Convention, together with agreements under its umbrella. The first meeting adopted a Work Plan (1997-2000) which provides for the establishment of joint bodies for transboundary watercourses; integrated management of water and related ecosystems; control of land based pollution, and the prevention, control and reduction of water related diseases<sup>37</sup>.

The 1992 Helsinki Convention demonstrates how an entire range of problems concerning transboundary water development and management can be addressed in a comprehensive and cooperative fashion. The States party to that agreement have agreed to far-reaching obligations and stringent guidelines and. This is not something that can be assumed to be imposed on unwilling third parties<sup>38</sup>. It is in this light that the strength of the flexibility of the 1997 UN Watercourses Convention can best be appreciated. Where States cannot agree on detailed measures for managing their international watercourses, the substantive rules of the UN Convention provide a solid legal framework necessary to ascertain the respective rights and duties of States and ultimately to answer the fundamental question of “who gets what”. The objectives of the 1997 UN Watercourses Convention and the 1992 Helsinki Convention are very different. While the former seeks to provide latter is a more specific in that it is aimed at limiting adverse transboundary impact. Given this difference in objectives and scope of the two instruments, each of them must be considered in the context of its adoption and operation.

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36 UN/ECE, Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Report of the First Meeting, 12 August 1997.

37 See UN Doc. ECE/ENVWA/32, 1 June 1993.

38 Only voluntary decision by riparian States create the basis for sustainable co-operation on an international level. Wrested concessions do not last very long. The example of international co-operation in the Rhine river basin demonstrates that collaboration can work, and can be regarded as a blueprint for other river systems. See P. Huisman, “The Rhine River Basin: Lessons from International Cooperation”, paper presented at the NATO Advanced Research Workshop on the Sustainable Management of Transboundary Watercourses, Moscow, Russia, 21-24 October 1997.

### 3.3. The Proposed European Water Framework Directive

Under the 1957 Treaty of Rome, which created the European Economic Community, the latter functions as a unit complete with executive, legislative and judicial branches and institutions<sup>39</sup>. In 1985, the Single European Act added Title VII, "Environment", to the Treaty of Rome<sup>40</sup> and thereby introduced this topic for comprehensive policy making at the Community level.

Community Regulation, promulgated by the Commission, are binding on member States<sup>41</sup>. Community directives, by comparison, define objectives for the member States, which are free to decide how these will be met and implemented nationally. Failure by any member State to observe these "laws" of the Community<sup>42</sup> might result in the matter being brought before the European Court of Justice (ECJ)<sup>43</sup>. The Commission has the mandate to supervise compliance with Community directives<sup>44</sup>, a number of which have dealt directly with water quality<sup>45</sup> and other aspects of international and national water management<sup>46</sup>. In March 1997, a draft Water Quality Framework Directive was proposed to "rationalize the Community's water legislation" by replacing six earlier directives and to provide a more comprehensive approach in addressing water issues. Unlike its predecessor legislation, the Framework Directive covers surface water, groundwater, estuaries and coastal waters, and has three main objectives: (1) to prevent further deterioration in, and to protect and enhance, the status of aquatic ecosystems; (2) to promote sustainable

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39 The Community has four principal institutions: the Commission, the Parliament, the Council of Ministers, and the Court of Justice; see brief description in McHugh, P.D., "The European Community Directive – An Alternative Environmental Impact Assessment Procedure?", 34 *NRJ* 1994, 589–628, 603-604.

40 Single European Act, 17 February 1986, *OJEC* (L 169) 1987, 1.

41 Treaty of Rome, Article 189. See also Lammers, J.G., "International and European Community Law Aspects of Pollution of International Watercourses", in Lang, W., Neuhold, H. & Zemanek, K. (ed.), *Environmental Protection and International Law* (1990), 115-146.

42 Sands, P.J., "European Community Environmental Law: The Evolution of a Regional Regime of International Environmental Protection", 100 *YaleLJ* 1991, 2511.

43 The ECJ has no enforcement Powers.

44 Treaty of Rome, Article 155.

45 See list contained in Lammers, supra note 41, 139-142.

46 For example, the Commission presented a proposal for a Council directive on the ecological quality of water, see *OJEC*, 18 July 1994, C/195/54, reprinted in "Eurobrief, Water", *European Environmental Law Review*, October 1994, 272-278.

water consumption based on the long-term protection of available water resources, and (3) to contribute to the provision of a supply of water in the qualities and quantities needed for its sustainable use<sup>47</sup>". According to the draft Directive Member States should ensure that 'good' status is achieved in all waters by the end of 2010<sup>48</sup>. On principal innovation of the Directive is that rivers and lakes will need to be managed by river basin – the natural geographical unit – instead of according to administrative or political boundaries<sup>49</sup>. This requirement is implemented through a number of procedural mechanisms, including the establishment of river basin districts and the preparation of River Basin Managements plans. Such an approach will increase watercourse States responsibilities but, at the same time, will strengthen significantly the position of those States which insist on cooperative management of transboundary water resources.

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47 "EU Water Policy. A View to the Future", Newsletter from the European Commission, published by DG XI, Issue No 2, March 1997.

48 *Ibid.*

49 *Ibid.* It is noted also that the Directive will "help the Community to implement the UN Economic Commission for Europe's Convention on the Protection and Use of Transboundary Watercourses and International Lakes."